

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

MISCELLANEOUS PETITION NO.27 OF 2005
IN
TESTAMENTARY PETITION NO.63 OF 2005

In the matter of Section
263 of the Indian
Succession Act, 1925;

And

In the matter of estate /
assets of Sir Jehangir
Boman Baman Behram
.....Deceased

And

In the matter of Letters
of Administration De-Bonis-
Non with the Will and with a
Codicil thereto annexed
granted on 3rd March, 2005;

Cyrus Behram Irani & Ors. ..Petitioners.

Vs.

Kavas Khurshed Nariman ..Respondents.

Mr.A.Y.Sakhare with Mr.Roop Vasudeo for the
Petitioners.

Mr.J.Reis with Mr.S.F. Rego i/b.Mr.N.J. D'Monte
for the Defendants.

**CORAM : S.J. VAZIFDAR, J.
DATED : 13TH DECEMBER, 2007**

P.C. :

This is a petition under Section 263 of the
Indian Succession Act, 1925 for setting aside and

cancelling the De-Bonis-Non with the Will and Codicil thereto annexed dated 3rd March, 2005 granted by this Court in the above Testamentary Petition No.63 of 2005 and for reliefs consequential thereto.

2. For convenience I will refer to the Petitioner in Testamentary Petition No.63 of 2005 as the original Petitioner.

3. The original Petitioner had filed the above Petition No.63 of 2005 for Letters of Administration De-Bonis-Non with the said will and Codicil annexed, of one Jehangir Baman Boman Behram alias Sir Jahangir B. Boman Behram alias Jahangir Boman Behram. The application was under Section 258 of the Indian Succession Act, 1925. The original Petitioner is the son of a daughter of a pre-deceased brother of the deceased. There is no dispute therefore that he was competent to make the application under Section 258.

4. Mr.Sakhare supported this Petition on the basis of clauses (b) and (c) to the Explanation to Section 263 of the Act. The basis of the submission is that the original Petitioner has suppressed the formation

of an alleged Trust and the purported vesting of the property of the deceased in that Trust. Sections 259 and 263 of the Act read as under :-

"259. Rules as to grants of effects unadministered.-In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made."

"263. Revocation or annulment for just cause.-The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.-Just cause shall be deemed to exist where-

- (a) the proceedings to obtain the grant were defective in substance; or
- (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
- (d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect."

5. I am not inclined to allow this petition on the limited ground that the Petitioner has not made out a case under Section 263(b) and (c) qua the alleged formation, creation and registration of a trust I will shortly refer to and the alleged vesting of the property of the deceased in the said trust.

I do not find that the Petitioner in Miscellaneous Petition No.63 of 2005 had suppressed the aforesaid facts. In fact, there was a disclosure thereof as is evident from paragraphs 8 and 9 of the petition which read as under :-

"8. That the said Banoo Furdoonji Boman-Behram had also in collaboration with some others purported to executed a Deed of Trust date 1-12-1998 in respect of the Mazgaon and some other property of the said deceased Sir Jehangir Boman Behram and further purported to transfer unto the alleged Trustees the said property referred

to therein."

"9. That the said act of the said Mrs.Banoo F.K.Boman Behram and others of purporting to have formed the Trust and pursuant thereto having applied for and obtained registration of the said Trust with the Charity Commissioner of Greater Bombay on 6-4-99 under No C-1216 (Mumbai), was challenged on the grounds, *inter alia*, that the said alleged transfer of the said Mazgaon and other property to the Trust by the said late Mrs.Banoo F.K.Boman Behram and others in respect of the said estate and property of the deceased Sir Jehangir Bomanji Boman- Behram was patently illegal and unlawful in as much as they had no authority or competence in law to do so as no right title or interest in respect of the estate and property of the deceased said Sir Jehangir Bomanji Boman-Behram had vested in the said Banoo Ferdoonji Kavasji Boman-Behram either under the said Testamentary Petition No.410 of 1994 or otherwise and therefore a Revision Application was instituted before the Charity Commissioner Maharashtra Mumbai being Rev. Application No.22 of 1999 under Sec 70-A of the Bombay Public Trusts Act 1950 *inter alia* for the cancellation of the Registration of the said impugned Trust insofar as the properties and estate of the said deceased Sir Jehangir Bomanji Boman-Behram was concerned which incidentally constituted the entire corpus for the said impugned Trust. The said Revision Application No.22 of 1999 is now placed for final orders before the Office of the Charity Commissioner."

6. In addition thereto, it is pertinent to note

that the Petitioner even had notice of the original Petitioner's intention to file Miscellaneous Petition No.63 of 2005 on 21.12.2004. The Miscellaneous Petition No.263 of 2005 was thereafter filed on 23.12.2004. In an affidavit dated 29.12.2004 filed by the original Petitioner in proceedings before the Charity Commissioner, he disclosed the lodging number of the said petition.

7. It was contended however by Mr.Sakhare that the statement in paragraph 14 in Miscellaneous Petition No.63 of 2005 is not only wrong but also constitutes suppression of the relevant facts. Paragraph 14 of the petition reads as under :-

"14. That the assets mentioned at items Nos.26, 27, 28, 29 and 30 of the Schedule of Assets annexed to the said Probate and of the Schedule of Assets marked Exhibit-D, being certain immovable properties belonging to the estate of the deceased, have remained un-administered. The unadministered estate of the deceased is set out in the **Schedule** hereto annexed and marked **Exhibit-E.**" (emphasis supplied.)

8. I do not read paragraph 14 as a statement of fact alone. This is specially so when read alongwith paragraphs 8 and 9 of the petition.

Paragraph 14, to my mind, is a legal submission to the effect that in view of what is stated earlier in the Petition especially in paragraphs 8 and 9 thereof in law the properties remained unadministered.

9. Admittedly, no caveat was filed. I am not dealing at this stage with the question whether the Petitioner in the Miscellaneous Petition has a caveatable interest or not. This is in view of my finding on the question as to whether the original Petitioner had suppressed any facts in Miscellaneous Petition No.63 of 2005.

10. The Petitioners had by a letter dated 28.2.2005 requested the Prothonotary and Senior Master inter-alia not to issue the De-Bonis-Non for a few days to enable them to take necessary steps by applying to this Court. It is also true that despite the same the De-Bonis-Non was granted within three days on 3rd March, 2005. Considering the view that I have taken, I do not feel called upon to comment on this aspect either.

11. Proceedings are pending between the Petitioners and the Original Petitioner in respect of the

creation of a trust by one Banoo F.K. Boman Behram, who was the widow of the son of a pre-deceased brother of the deceased. The said Banoo expired on 2.11.2000. The Petitioners contend that the said Banoo had on 1st December, 1998 settled the estate of the deceased in a trust as per the Will and applied for registration thereof before the Charity Commissioner. In view of her having expired, the petition under Section 258 filed by the said Banoo came to be dismissed by an order dated 1st February, 2001.

12. On 3rd August, 1991 some of the tenants of the properties allegedly vested in the trust, filed Appeal under Section 70A of the Bombay Public Trust Act for de-registration of the Trust. On 9th August, 2001 the Original Petitioner made an application for intervention in the said proceedings. The Appeal was rejected. However, the Charity Application by the tenants under Section 72 of the Bombay Public Trust Act is pending before the Bombay City Civil Court.

13. There is considerable dispute between the parties regarding the validity of the creation of the trust and the vesting of a part of the estate of

the deceased in the trust/trustees. I make it clear that in view of my above finding I have not entertained any arguments or submissions in respect thereof. No rights are created or affected in any manner whatsoever qua the said trust and all that has transpired in respect thereto by virtue of this order.

14. With the aforesaid clarifications, the petition is dismissed. The order dated 22nd December, 2005 is continued till 29th February, 2008.

15. In the circumstances of the case, there shall be no order as to costs.